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No.54885-2
COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

FREELAND LENDING LLC, Respondent

v.

RCJS PROPERTIES LLC, Appellant

FILED
COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY SLT
DEPUTY

APPELLANT'S OPENING BRIEF

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A. ASSIGNMENT OF ERROR

Assignment of Error

No. 1. The trial court erred in entering the Order of May 22, 2020 granting Plaintiff's Motion for Summary Judgment and Writ of Ejectment.

Issues Pertaining to Assignments of Error

No. 1. Did the trial court err in hearing Plaintiff's Motion for Summary Judgment without allowing continuance for Defendant to obtain necessary affidavits, especially when Covid restrictions and Emergency Orders state that the Court **will** grant such continuance?

No. 2. Is the trial court divested of personal jurisdiction when necessary parties are not served personally or by publication, resulting in a taking without Constitutional Due Process?

B. STATEMENT OF THE CASE

A background history will be told:

A disabled veteran, Sorrels, obtained a re-fi mortgage for a property held in a Trust with Sorrels as Trustee. The Lender required deed change to an LLC, which Sorrels did, citing a WAC for name change without change in ownership or possession rights. The LLC and the property both remained as the res for the Trust with ownership and possession remaining with the beneficiaries.

The resulting loan paid off the existing \$59,000 mortgage, and provided \$37,000 to pay credit card debt. The property was worth \$300,000. Amount stated on Promissory Note was \$202,000, with the difference being loan fees and a holdback which was never drawn. No interest charge for money not drawn. Promissory Note said monthly payments of \$437, loan term 12 months. Autopay required, so documents signed with bank routing and account number.

Months later, Lender says "Did not receive payments." Sorrels responded "You required autopay docs at closing." Lender said "Oh, we did not start that." Sorrels paid payments.

Months later, Lender says, "Here is copy of minor changes we have made", sending altered Promissory Note now showing monthly payment of \$2,698. Sorrels said, "No way. That is not what was contracted." Sorrels paid an additional \$5,000 to more than cover all loan payments for entire remaining loan term. Lender said sorry, "we will fix the mistake." Months later Lender sends Notice of Default, and in follow up phone call, says, "another mistake, ignore it."

Sorrels stumbles upon published Summons and Complaint in local legal newspaper (TDI). Sorrels filed Notice of Appearance before filing deadline. Order of Default entered. Sorrels obtained an attorney who filed Limited Notice of Appearance and obtained Order vacating default with finding of service deficient, and order for new service on parties.

Judicial foreclosure conducted in Federal District Court, Tacoma. Two parties named as Defendants: The LLC (which was never served) and Sorrels (the personal guarantor of the Note).

Court pleadings show that Sorrels had resigned from his position as both the Trustee and Manager for LLC due to a severe heart attack ten months before he had found the published service for the District Court case, and three years before the current subsequent case at bar. Immediate appointments had been done for replacement Trustee/Manager. The LLC/Trustee/Manager was **never** served with process in District Court.

Lender filed Motion for Summary Judgment. Sorrels' attorney reminded Sorrels, he only had limited appearance, and Sorrels must prepare and file response to summary judgment, which Sorrels did.

Sorrels was never informed that the Court did not recognize a limited appearance, and still considered his attorney as his attorney. Court and Lender's attorney sent all pleading to old attorney and ignored everything Sorrels filed.

Summary Judgment entered. Sorrels did not discover this in court files until four weeks after entry and rushed to file appeal. Appeal took long time and eventually dismissed without hearing. Apparently for reason of late filing.

Sorrels attempted redemption which was authorized by the Judgment. Federal Court Clerk said to see Marshall's Office. Marshall's Office sent to Seattle Marshall's Office. Seattle Office said Court did not give instructions, referred to DC Office. DC Marshalls Office said that they WOULD NOT issue deed, even after redemption period passed.

Lender filed Complaint for Writ of Ejection in Superior Court. Sorrels only person served. Again NO service by publication. No service upon LLC, Trust, Beneficiaries, occupants, or person leasing use of land for agricultural purposes.

Sorrels requests continuance to obtain needed affidavits which is denied. Sorrels argues Deed not issued yet. Lender shows deed just issued. Motion granted along with Writ of Ejection.

District Court and Marshall's Deed were very careful to Order ONLY the transfer of interest belonging to Sorrels and the LLC. The ownership and possession by others were NOT affected. The the Order and Warrant directs the Sheriff to deliver possession to Lender without such restriction, creating a Constitutional Due Process violation.

Sorrels' position as a Defendant served as the Guaranteer makes him under those document and court Orders and Judgments responsible for all costs of recovery, damages, etc. He is entitled to be involved for his own defense, AND forced to be involved as having been served.

C. ARGUMENT

Issue No 1. Did the trial court err in hearing Plaintiff's Motion for Summary Judgment without allowing continuance for Defendant to obtain necessary affidavits, especially when Covid restrictions and Emergency Orders state that the Court **will** grant such continuance?

We have a pandemic, Covid. The Washington State Supreme Court has created Emergency Rules for Courts to follow to help avoid a few more deaths.

Emergency Order #4, "Public Health Emergency Order Regarding Operations" for Pierce County says:

"A. Civil Matters. 1. If any party requests a continuance, the court **will** grant the continuance and set a new trial date." 2. For trial dates scheduled after April 24, 2020, the court **will** consider, and liberally grant request to continue trial date."

The appropriate definition for the word "will", with this usage, in the dictionary would be a "command".

Emergency Order #4 was amended by Emergency Order #20-15 on May 13, 2020, with no change to this provision.

Sorrels filed Declaration Opposing Summary Judgment Motion (CP 131-141) preceding a Summary Judgment motion to be heard on May 22, 2020. Sorrels' Motion was denied at the hearing on May 22, 2020 (CP 176-177). The Court failed to comply with mandatory Emergency Orders.

Avoiding public contact was not the only reason for continuance. Essential affidavits were not available to provide argument at the hearing. Time was needed to obtain these documents. Details are in the declaration at CP 131-141 and CP 153-173. The court failed to provide Sorrels with time to prepare an argument in defense (CP 177).

Issue No 2. Is the trial court divested of personal jurisdiction when necessary parties are not served personally or by publication, resulting in a taking without Constitutional Due Process?? YES

The Complaint is a case for ejectment under RCW 7.28.010. This is a quiet title statute, used normally for ten year uncontested possession. It also is used to determine "best title", and for ejectment.

Washington Practice Series, Volume 18, Chapter 11 provides insight to the Constitutional issues involved. There is a need for clear title. There is also Constitutional mandates that property cannot be taken without Due Process and physical service of process. When unknown parties have unknown claims, this becomes a problem.

The system used in Washington State to obtain the best title finality possible with the least risk of Constitutional violation is to use due diligence first and obtain personal service (RCW 4.28.080), followed by service by publication with affidavit filed (RCW 4.28.100), combined with a recorded lis pendens (RCW 4.28.160). If these steps are done, then RCW 4.28.150 allows the use of the following words in the action: "Also all other persons or parties unknown claiming any risk, title, estate, lien, or interest in the real estate described in the complaint herein". These words allow service upon such unknown persons or parties or by publication.

In this immediate matter of ejectment, there was NO publication, NO affidavit of publication filed, NO lis pendens recorded, NO personal service on known possible claimants, and NO diligent search. This was also true for the underlying foreclosure case in Federal District court.

The Federal court judge was very careful to limit the application of Judgment to only the two defendants before the court: RCJS Properties LLC, which has not existed since its administrative dissolution in 2017, and Richard Sorrels who was sued only in his capacity as a guarantor of the promissory note. (CP 164)

The US Marshall in the United States Marshall's Deed was also very careful that the only interests transferred to Freeland was "all right, title, interest and claim which RCJS Properties LLC, a Washington limited liability company, Richard Sorrels, individually, and the marital community comprised of Richard

Sorrels and Jane Doe Sorrels, husband and wife defendants, has in the subject real estate as legally described above." (CP 158-160). It should be noted that there is NO wife or any Jane Doe Sorrels. Interests held by non-named persons are not affected by this deed.

The only "defendant" identified in the Complaint is RCJS Properties LLC, which was identified in the Complaint as "defunct" (dead), "having been administratively dissolved on February 28, 2017". (CP 1). The Complaint has not been amended.

In a Declaration made under penalty of perjury by Adam Birnbaum, Plaintiff's attorney, the declarant clearly states that "Richard Sorrels as an individual is NOT a named party to the suit." (CP 45). If Sorrels is not a party to the suit, then he must fall under the "ALL OTHER OCCUPANTS" label in the complaint. Which as discussed above, was NOT perfected.

Sorrels filed Notice of Appearance because he had been mailed a copy of Summons and Complaint, and had assumed that made him a Defendant.

Attorney Birnbaum, despite documents in both this case and the foreclosure case continued to falsely believe that Sorrels was the registered agent for RCJS Properties LLC (CP 45).

The Declaration of Christopher Sorrels describes how Richard Sorrels came to resign his position as registered agent on 2/15/2017 (CP 155), with the actual document attached thereto. (CP 162). Christopher Sorrels was never served with any Summons or Complaint. (CP 153).

In his "Declaration of Service of Summons and Complaint Pursuant to RCW 23.95.450", Birnbaum declares that Defendant RCJS Properties has been dissolved as of 2/28/2017 and that service of the Summons and Complaint had been made in January 2020 based upon an address obtained on a document filed with the Secretary of State in February 2016 when the LLC was created (CP 50 and CP 54).

Richard Sorrels WAS the original Registered Agent for the LLC when it was created, but resigned on 2/15/2017 (CP 162) after a massive heart attack and emergency surgery, becoming incapacitated (CP 155). The LLC was dissolved by the Secretary of State on 7/03/2017 (CP 165). The stated reason for dissolving was "failure of the entity to file required report". Which "report" is not specified. Neither the LLC nor a Registered Agent existed in 2020 when Service was claimed at an address not used.

Subparagraph (4) of RCW 23.95.450 (Birnbaum claimed service was accomplished under subparagraph (3)), states "The Secretary of State SHALL be an agent of the entity for service of process

IF process, notice, or demand cannot be served on an entity pursuant to subsections (1), (2), or (3) of this section.

"If an LLC fails to appoint a registered agent or a registered agent resigns and the company fails to replace the agent, the Secretary of State becomes the designated registered agent, this applies to both domestic and foreign LLCs. RCW 25.15.025; RCW 25.15.355." (Quoted from Washington Partnership and Limited Liability Company Deskbook, Chap 6, section 6.4(1).)

There is no evidence that the Secretary of State was served, so NO service was obtained upon RCJS Properties LLC.

With no service upon any Defendants, there are no Constitutionally acceptable parties to be affected by this lawsuit which cannot exist without Defendants, and any Writ of Ejection obtained hereunder would have NO affect on any person not served.

It should also be noted that Declaration of Kelle Clinton establishes that she has a leaseholders interest in the property with protection from eviction under RCW 59.12.035, for agricultural use. (CP 151-152).

The basic reason for requiring service by publication is to include the UNKNOWN necessary parties. There was no CR19 motion made in Superior Court, because at that time it was not known that the wording of the resultant Order for Summary Judgment would violate the Constitutional Rights of the unnamed persons. The Marshall's Deed transfer ONLY the rights of RCJS Properties LLC and Richard Sorrels, nothing else (CP 159-160). The Complaint includes Richard Sorrels as a Defendant only in his capacity as a guarantantor of the Note (CP 45).

The Writ of Ejection sought concerns POSSESSION Rights, based upon Deed and title ownership. Prior to loan closure, Freeland required deed transfer from RCJS Trust to RCJS Properties LLC. The Deed recorded cited WAC 458-61A-211, which only allows transfer if NO change in ownership shares. Under RCJS Trust, the Trustee holds "bare legal title" while the Beneficiaries are the "True Owners" with Possession Rights (CP 156). Freeland approved recording of this Deed before it was recorded. The Trustee of the RCJS Trust remained the sole member and manager of RCJS Properties. The property and RCJS Properties LLC remained the res of the RES Trust. The Beneficiaries remained the "True Owners" with Rights of possession (CP 156-157).

The Promissory Note was signed by the "Trustee" of the RES Trust which is proper as the titleholder on the Deed, and the sole member of RCJS Properties LLC.

Necessary parties were never served. The question remains whether the issue of necessary parties can be raised for the first time on appeal.

"Trial Court lacks jurisdiction to adjudicate a dispute if all necessary parties are not before it; trial court's lack of jurisdiction may be raised for the first time on appeal by either party or by the appellate court itself." (Washington Rules Practice, CR 19. Page 462.)

"A "necessary party" is one who has sufficient interest in the litigation that the judgment cannot be determined without affecting that interest or leaving it unresolved." (Harvey v. Board of County Commissioners of San Juan County, 90 Wash 2d 473, 584 P2d 391 (1978)).

D. CONCLUSION

Necessary parties were NOT served. The Constitutional Due Process Rights of those parties are violated by the wording of the Order of Summary Judgment and Writ which allows ejectment of persons with possession who were not made parties. Two solutions are possible: Dismiss the Case, or remand for striking all actions back to filing of the Complaint. Appellant believes the normal result of lack of jurisdiction is dismissal. The Court knows better which to choose over this pro se litigant.

DATED this 29th day of October 2021.

Respectfully submitted,



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